

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JACK LAWRENCE EARL,

Petitioner,
vs.
CRAIG TURNBULL, ET AL.,

Respondent.

A02-0224 CV (HRH)

**FINAL RECOMMENDATION
FOR DISMISSAL OF GROUND 4
IN LIGHT OF PETITIONER'S
RESPONSE TO DOCKET NO. 47**

(Docket No.53)

The Magistrate Judge has reviewed the petitioner's objections to his initial recommendation and the respondents' responses thereto. (Docket Nos. 56 and 57). Mr. Earl's objections, rely on his previous briefing, and otherwise seek a clarification to the effect that the recommendation is intended only to recommend dismissal of ground No. 4 of his petition only as to his claim regarding the testimony of Cyril Reape. The respondent concurs in respect to the clarification sought by Earl, and otherwise agrees with the court that the claim regarding Reape's testimony should be dismissed. Earl's point is well taken. While the recommendation was clearly directed only at this claim, the conclusion was overly broad in that it called for the dismissal of ground No. 4 in total. Accordingly, there is nothing in the briefing that would cause the Magistrate Judge to modify the gist of his recommendation that the claim regarding Reape's testimony be dismissed. However, the technical error of recommending ground No. 4 in its totality shall be corrected.

//

CONCLUSION

For the foregoing reasons the Magistrate Judge hereby modifies his recommendation that ground No. 4 of the petitioner's petition for habeas corpus be **DISMISSED**. In fact it is only the claim regarding the testimony of Cyril Reape contained in ground No. 4 that should be dismissed. It is so recommended.

DATED this 4th day of January, 2006, at Anchorage, Alaska.

/S/
JOHN D. ROBERTS
United States Magistrate Judge